

REPLY COMMENTS OF JAMES M. TENNANT ON PROPOSED PROGRAMMATIC
NATIONWIDE AGREEMENT ON FCC COMPLIANCE WITH THE NHPA

Docket WT 03-128

SUBMITTED ELECTRONICALLY ONLY

General Comments

I am concerned when I see the FCC attempting to streamline their NHPA rules when they have never shown the ability to enforce existing rules according to their own regulations and Federal law.

I am concerned when I see the Advisory Council on Historic Preservation enter into questionable agreements with the FCC that ignores the clear requirement of federal law for a federal agency to take into consideration the effect of their undertakings on historic properties prior to the issuance of a license.

State Historic Preservation Offices, particularly the office in South Carolina, have repeatedly shown their willingness to illegally substitute their opinion for that of the FCC's, while arrogantly excluding the views of the public.

The recent admission by the SC SHPO in the United States Court of Appeals for the District of Columbia Circuit Case No. 02-1060, In Re: James M. Tennant, of "erroneous information" and incorrect "no effect" comments on letters reviewing towers that were eventually erected directly on National Register listed properties shows the inadequacy of the existing system that the FCC is trying to streamline.

Additionally, the SC SHPO has shown its ignorance of technology by entering into "conditional no adverse effect" determinations that postulated adverse visual effect inducing telecommunications towers would be obsolete in five to ten years due to advances in satellite technology. As long as SHPO's are able to make such determinations, absent any expertise in telecommunications, no Section 106 process is safe. As long as the FCC allows such illegal determinations to stand, without adopting such findings at its own, it has no integrity and show a willingness to accept erroneous decisions that fly in the face of reality.

General Objections

To the extent any final rules adopted by the FCC ignore the clear requirements of the NHPA for the FCC to take into consideration the effect of their undertakings on historic properties prior to the issuance of a license, I object to such rules and reserve all rights to challenge such rules in Court.

To the extent any final rules adopted by the FCC establish arbitrary or capricious distance limitations or exclusions that exempt undertakings from NHPA review by the FCC, I object to such rules and reserve all rights to challenge such rules in Court.

To the extent any final rules adopted by the FCC establish safe harbors for companies acquiring tower or facility assets of companies that have failed to comply with the NHPA, I object to such rules and reserve all rights to challenge such rules in Court.

To the extent any final rules adopted by the FCC exempt tower construction and leasing companies that are in the business of building or acquiring towers for eventual use by telecommunications carriers of the FCC, from being considered as agents of licensees of the FCC and libel for compliance with the NHPA, I object to such rules and reserve all rights to challenge such rules in Court.

To the extent any final rules adopted by the FCC fail to consider the effect of bright white flashing strobe lights that are required on towers above certain heights, on historic properties at a distance from the tower, particularly at night when such lights are not required to covert to flashing red lights, I object to such rules and reserve all rights to challenge such rules in Court.

To the extent any final rules adopted by the FCC establish inadequate public notice and comment requirements and procedures, I object to such rules and reserve all rights to challenge such rules in Court.

Respectfully submitted,

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